

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

BECKLEY DIVISION

RANDY COOPER,

Plaintiff,

v.

Case No. 5:07-cv-00392

WILLIAM LAIRD, Sheriff,

Defendant.

PROPOSED FINDINGS AND RECOMMENDATION

On June 21, 2007, Plaintiff, an inmate at the Mount Olive Correctional Complex ("MOCC"), acting pro se, filed a Complaint against Defendant for relief under 42 U.S.C. § 1983 (docket sheet document # 1), an Affidavit in support thereof (# 2) and an Application to Proceed Without Prepayment of Fees (# 3). This matter is assigned to the Honorable Thomas E. Johnston, United States District Judge, and it is referred to the undersigned United States Magistrate Judge for submission of proposed findings and a recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B).

On June 28, 2007, before any action had been taken concerning the documents filed by Plaintiff, Plaintiff filed a Notice of Appeal and Request for Certificate of Appealability (# 6). Accordingly, the Clerk of this court was required to process the case file for an appeal to the United States Court of Appeals for

the Fourth Circuit, despite the fact that there was no ruling to appeal.

On December 21, 2007, the United States Court of Appeals entered an Order dismissing Plaintiff's appeal for failure to prosecute (# 19), issued a Mandate (# 20), and returned the case file to the Clerk of this court (# 18). (Cooper v. Laird, No. 07-6991, Dec. 21, 2007).

ANALYSIS

Including this matter, Plaintiff has filed 47 civil rights cases in this court since September of 1999. As Plaintiff is well aware, pursuant to 28 U.S.C. § 1915(g), Judge Haden and Judge Faber have previously enjoined him from filing any further civil actions without payment in full of the applicable filing fee, or without leave of court to file such an action without prepayment of fees, based upon a showing that he is under imminent danger of serious physical harm.

The undersigned proposes that the presiding District Judge **FIND** that Plaintiff has neither paid the filing fee, nor obtained leave of court to file this action without prepayment thereof. The undersigned further proposes that the presiding District Judge **FIND** that Plaintiff's present complaint does not allege that he is under imminent danger of serious physical injury. In fact, Plaintiff's complaint contains claims identical to those raised in his prior lawsuits, all of which have been dismissed.

The undersigned further proposes that the presiding District Judge **FIND** that Plaintiff's claims are based on factual contentions that are clearly baseless, fanciful, fantastic or delusional. Denton v. Hernandez, 504 U.S. 25, 33 (1992). In reviewing factual allegations, a court need not accept irrational or wholly incredible allegations whether or not there are judicially noticeable facts available to rebut them. Id. at 303-33.

Thus, it is respectfully **RECOMMENDED** that Plaintiff's Complaint (# 1) be **DISMISSED**, pursuant to 28 U.S.C. § 1915(g), and the injunction of his initiation of further actions without prepayment of fees, as issued in prior orders by this United States District Court. It is further respectfully **RECOMMENDED** that the presiding District Judge **DENY** Plaintiff's Application to Proceed Without Prepayment of Fees and Costs (# 3).

Plaintiff is notified that this "Proposed Findings and Recommendation" is hereby **FILED**, and a copy will be submitted to the Honorable Thomas E. Johnston, United States District Judge. Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(B), and Rules 6(e) and 72(b), Federal Rules of Civil Procedure, Plaintiff shall have ten days (filing of objections) and then three days (service/mailing) from the date of filing this "Proposed Findings and Recommendation" within which to file with the Clerk of this Court, specific written objections, identifying the portions of the "Proposed Findings and Recommendation" to which

objection is made, and the basis of such objection. Extension of this time period may be granted by the presiding District Judge for good cause shown.

Failure to file written objections as set forth above shall constitute a waiver of de novo review by the District Court and a waiver of appellate review by the Circuit Court of Appeals. Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984). Copies of such objections shall be served on Judge Johnston and this Magistrate Judge.

The Clerk is directed to file this "Proposed Findings and Recommendation" and to mail a copy of the same to Plaintiff.

December 27, 2007

Date



Mary E. Stanley
United States Magistrate Judge